

1 EDMUND G. BROWN JR.
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2011-25**

13 **SHERRIE LEE FISHER**
14 **380 Channing Way #163**
15 **San Rafael, CA 94903**

ACCUSATION

16 **Registered Nurse License No. 551844**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about February 9, 1999, the Board of Registered Nursing issued Registered
24 Nurse License Number 551844 to Sherrie Lee Fisher (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on August 31, 2010, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Board of Registered Nursing (Board),
Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
3 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
4 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
5 Nursing Practice Act.

6 5. Section 2761 of the Code states:

7 "The board may take disciplinary action against a certified or licensed nurse or deny an
8 application for a certificate or license for any of the following:

9 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

10 ...

11 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
12 functions, and duties of a registered nurse, in which event the record of the conviction shall be
13 conclusive evidence thereof.

14 ..."

15 6. Section 2762 of the Code states:

16 "In addition to other acts constituting unprofessional conduct within the meaning of this
17 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this
18 chapter to do any of the following:

19 ...

20 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
21 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
22 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
23 himself or herself, any other person, or the public or to the extent that such use impairs his or her
24 ability to conduct with safety to the public the practice authorized by his or her license.

25 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
26 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
27 or the possession of, or falsification of a record pertaining to, the substances described in
28

1 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
2 thereof.

3 . . ."

4 7. Section 2770.11 of the Code states:

5 "(a) Each registered nurse who requests participation in a diversion program shall
6 agree to cooperate with the rehabilitation program designed by a committee. Any failure to
7 comply with the provisions of a rehabilitation program may result in termination of the registered
8 nurse's participation in a program. . .

9 "(b) If a committee determines that a registered nurse, who is denied admission into
10 the program or terminated from the program, presents a threat to the public or his or her own
11 health and safety, the committee shall report the name and license number, along with a copy of
12 all diversion records for that registered nurse, to the board's enforcement program. The board may
13 use any of the records it receives under this subdivision in any disciplinary proceeding."

14 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially
16 related to the qualifications, functions, or duties of the business or profession for which the
17 license was issued.

18 9. Section 493 of the Code states:

19 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
20 the department pursuant to law to deny an application for a license or to suspend or revoke a
21 license or otherwise take disciplinary action against a person who holds a license, upon the
22 ground that the applicant or the licensee has been convicted of a crime substantially related to the
23 qualifications, functions, and duties of the licensee in question, the record of conviction of the
24 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
25 and the board may inquire into the circumstances surrounding the commission of the crime in
26 order to fix the degree of discipline or to determine if the conviction is substantially related to the
27 qualifications, functions, and duties of the licensee in question.

1 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
2 'registration.'"

3 10. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
4 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
5 licensee or to render a decision imposing discipline on the license.

6 11. Section 118, subdivision (b), of the Code provides that the expiration of a license
7 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
8 within which the license may be renewed, restored, reissued or reinstated.

9 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case.

13 FIRST CAUSE FOR DISCIPLINE

14 (CRIMINAL CONVICTIONS)

15 13. Respondent is subject to disciplinary action under sections 2761(f), 2762(c), and/or
16 490 in that on or about July 31, 2007, in a criminal proceeding entitled *The People of the State of*
17 *California v. Sherrie Lee Fisher* in Marin County Superior Court, Case Number CR153900,
18 Respondent was convicted by her plea of guilty of violating Vehicle Code section 23152(a)
19 (driving while under the influence of alcohol). Respondent was sentenced to serve 15 days in jail,
20 to probation for three years, and ordered to pay fines and fees in the amount of \$2,422.00. The
21 circumstances of the conviction are that on or about May 31, 2007, at 515 Third Street in San
22 Rafael, California, Respondent was stopped for speeding. The police officer noted objective
23 signs of intoxication. Respondent's blood alcohol measured .26%.

24 14. Respondent is further subject to disciplinary action under sections 2761(f), 2762(c),
25 and/or 490 in that on or about December 30, 2004, in a criminal proceeding entitled *The People of*
26 *the State of California v. Sherrie Lee Fisher* in San Mateo County Superior Court, Case Number
27 N344450, Respondent was convicted of violating Vehicle Code section 23152(b) (driving with
28 blood alcohol level in excess of .08%).

1 SECOND CAUSE FOR DISCIPLINE

2 (ILLEGAL DRUG USE)

3 15. Respondent is subject to disciplinary action under sections 2761(a) and/or 2762(b) in
4 that she used a controlled substance or dangerous drug in a manner dangerous to herself or others.
5 The circumstances are that on or about November 27, 2007, Respondent enrolled in the Board's
6 Diversion Program. On or about May 16, 2008, Respondent tested positive for cocaine. On or
7 about March 8, 2010, Respondent again tested positive for cocaine.

8 OTHER MATTERS

9 16. Complainant alleges that Respondent enrolled in the Board's Diversion Program on
10 or about November 27, 2007. Respondent was terminated from the Diversion Program on or
11 about March 15, 2010 pursuant to Code section 2770.11(b), due to non-compliance, and as a
12 result of the Diversion Program's assessment that she was a public safety risk.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Registered Nursing issue a decision:

- 16 1. Revoking or suspending Registered Nurse License Number 551844, issued to Sherrie
17 Lee Fisher;
- 18 2. Ordering Sherrie Lee Fisher to pay the Board of Registered Nursing the reasonable
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions
20 Code section 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 7/9/10

23 *Louise R. Bailey*
24 LOUISE R. BAILEY, M.ED., RN
25 Interim Executive Officer
26 Board of Registered Nursing
27 Department of Consumer Affairs
28 State of California
Complainant

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